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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

LANCE E. BRIGGS,

Plaintiff,

vs.

**MICHAEL HOLSAPPLE AND POLK
COUNTY,**

Defendants.

Case No. CV 08-6037-KI

FIRST AMENDED COMPLAINT

*(Civil Rights / False Arrest /
False Imprisonment / Negligence)*

DEMAND FOR JURY TRIAL

I.

INTRODUCTION

1. Pursuant to 42 USC §1983, Plaintiff Lance E. Briggs alleges that Defendant Michael Holsapple violated his 4th Amendment rights by subjecting or causing him to be subjected to an arrest without probable cause and unlawfully detaining him after the arrest. Pursuant to ORS 30.275, Plaintiff Lance E. Briggs also makes claims under state law against

Defendant Polk County for damages arising from false arrest, false imprisonment, and negligence.

2. Plaintiff seeks awards of economic damages, noneconomic damages, attorney fees, and litigation expenses/costs against Defendants.

II.

JURISDICTION

3. This Court has jurisdiction over Plaintiff's claims by virtue of 28 USC §§1331, 1343, and 1367.

III.

PARTIES

4. At all material times herein, Plaintiff Lance E. Briggs ("Mr. Briggs") was a resident of Marion County in the State of Oregon.

5. At all material times herein, Defendant Michael Holsapple ("Holsapple") was a Detective with the Polk County Sheriff's Office acting within the course and scope of his employment. Holsapple is sued in his individual capacity only.

6. At all material times herein, Defendant Polk County ("County") is a public body responsible under state law for the acts and omissions of its law enforcement officers and other employees, including those whose conduct is at issue herein.

IV.

FACTS

7. At all material times herein, the Defendants acted under color of State law.

8. On September 21, 2007, Holsapple was working a traffic enforcement shift on Hwy 22 in Polk County, Oregon. Holsapple does not regularly work traffic enforcement and had volunteered for the shift outside of his normal duties.

9. At approximately 7:00 p.m. on September 21, 2007, Holsapple observed a white car traveling 74 mph in a posted 55 mph zone. The man driving the vehicle would later be identified as Mr. Briggs.

10. Holsapple initiated a traffic stop whereupon he contacted Mr. Briggs and asked him to provide his drivers license, registration and proof of insurance. Mr. Briggs provided Holsapple with the requested documents without any trouble.

11. After his initial questioning, Holsapple asked Mr. Briggs if he would voluntarily consent to the National Traffic Highway Safety Administration ("NTHSA") Standard Field Sobriety Tests ("SFST"). Mr. Briggs consented.

12. The SFST consists of three tests, the "Horizontal Gaze Nystagmus" ("HGN"), the "Walk and Turn", and the "One Leg Stand" test.

13. The SFST were conducted on a cement/asphalt surface with pieces of gravel scattered about on top. The diameter of the gravel ranged from 0.25" to 1". The surface where the SFST were conducted also had a slight incline.

14. Mr. Briggs passed the HGN test under the guidelines set forth by the NTHSA.

15. Mr. Briggs failed the "Walk and Turn" and the "One Leg Stand" tests under the guidelines set forth by the NTHSA. Mr. Briggs' failure of these tests was directly related to the surface conditions upon which the tests were conducted.

16. Holsapple knew or should have known that the conditions of the surface where the SFST were conducted would adversely affect Mr. Briggs' performance of the tests and therefore distort the results obtained.

17. Holsapple failed to utilize and apply the training he received in the detection of DUII and the administration of the SFST.

18. At no time prior to, during, or after the administration of the SFST did Holsapple have a factual basis to form probable cause and arrest Mr. Briggs.

19. Following the administration of the SFST, Holsapple placed Mr. Briggs under arrest for Driving Under the Influence of Intoxicants/Alcohol.

20. Holsapple transported Mr. Briggs to the Polk County Jail. Mr. Briggs subsequently consented to a breath test, which registered 0.00% blood alcohol content ("BAC").

21. At no point did Holsapple observe any indication of illegal drug use by Mr. Briggs.

22. After obtaining a BAC of 0.00% and observing no indication of illegal drug use, Holsapple continued his arrest and detention of Mr. Briggs eventually citing him for Driving Under the Influence of Intoxicants.

23. Holsapple further requested that Mr. Briggs submit a urine sample. The urine sample tested negative for the presence of drugs.

24. As a direct result of the above conduct by Defendants, Mr. Briggs has suffered and endured emotional distress, social ostracism, and loss of employment. Further, the conduct by Defendants has created a criminal record for Mr. Briggs with an arrest that cannot be removed under current Oregon law.

V.

FIRST CLAIM FOR RELIEF

(§1983 – 4th Amendment Violation – False Arrest)

25. As applicable, Plaintiff Lance E. Briggs incorporates the above.

26. As described above, Holsapple violated Mr. Briggs' right not to be subjected to arrest without probable cause as guaranteed by the 4th Amendment of the United States Constitution.

27. As a result of the above, Mr. Briggs is entitled to an award of economic and noneconomic damages against Holsapple in amounts to be determined at trial.

28. Briggs should be awarded his attorney fees and litigation expenses/costs against Holsapple pursuant to 42 USC §1988.

VI.

SECOND CLAIM FOR RELIEF

(§1983 – 4th Amendment Violation – Unlawful Detention)

29. As applicable, Plaintiff Lance E. Briggs incorporates the above.

30. As described above, Holsapple violated Mr. Briggs' right not to be unlawfully detained without probable cause as guaranteed by the 4th Amendment of the United States Constitution.

31. As a result of the above, Mr. Briggs is entitled to an award of economic and noneconomic damages against Holsapple in amounts to be determined at trial.

32. Briggs should be awarded his attorney fees and litigation expenses/costs against Holsapple pursuant to 42 USC §1988.

VII.

THIRD CLAIM FOR RELIEF

(State Law Claim – False Arrest)

33. As applicable, Plaintiff Lance E. Briggs incorporates the above.

34. Mr. Briggs gave the County timely written notice of his state law claim for false arrest and has satisfied the notice requirements of the Oregon Tort Claims Act.

35. The Defendants intended to confine and did confine Mr. Briggs by arresting him for driving under the influence of intoxicants and transporting him to the Polk County Jail.

36. Mr. Briggs was made aware of his confinement when Holsapple informed him that he was under arrest.

37. The confinement of Mr. Briggs was unlawful because Holsapple did not have a factual basis to form probable cause and arrest Mr. Briggs.

38. As a result of the above, Mr. Briggs is entitled to an award of economic and noneconomic damages against the County in amounts to be determined at trial.

39. Mr. Briggs should be awarded his costs against the County.

VIII.

FOURTH CLAIM FOR RELIEF

(State Law Claim – False Imprisonment)

40. As applicable, Plaintiff Lance E. Briggs incorporates the above.

41. Mr. Briggs gave the County timely written notice of his state law claim for false arrest and has satisfied the notice requirements of the Oregon Tort Claims Act.

42. The Defendants intended to confine and did confine Mr. Briggs by further detaining him at the Polk County Jail for Driving Under the Influence of Intoxicants after he had registered a BAC of 0.00% and no indications of drug use were present.

43. Mr. Briggs was made aware of his continued confinement when Holsapple refused to release him, issued him a citation for Driving Under the Influence of Intoxicants, and returned him to a holding cell.

44. The confinement of Mr. Briggs was unlawful because Holsapple did not have a factual basis to form probable cause and detain Mr. Briggs.

45. As a result of the above, Mr. Briggs is entitled to an award of economic and noneconomic damages against the County in amounts to be determined at trial.

46. Mr. Briggs should be awarded his costs against the County.

IX.

FIFTH CLAIM FOR RELIEF

(State Law Claim – Negligence)

47. As applicable, Plaintiff Lance E. Briggs incorporates the above.

48. Mr. Briggs gave the County timely written notice of his state law claim for negligence and has satisfied the notice requirements of the Oregon Tort Claims Act.

49. The County was negligent in one or more of the following particulars:

- (a) Failing to administer timely and appropriate training;
- (b) Allowing officers who do not routinely work traffic enforcement shifts to work traffic enforcement shifts that are outside the scope of their regularly performed duties;
- (c) Failing to adequately assess and ensure that all officers maintain sufficient competency to perform their duties; and

(d) Failing to implement a policy whereby drivers suspected of DUII that subsequently register a 0.00% BAC and give no indication of drug use are released from custody without further incident or citation.

50. The County through the acts and omissions of Holsapple was negligent in one or more of the following particulars:

- (a) Arresting Mr. Briggs without probable cause;
- (b) Failing to release Mr. Briggs after his breath test results registered a 0.00% BAC and no indications of drug use were present;
- (c) Issuing a citation to Mr. Briggs for DUII after his breath test results registered a 0.00% BAC and no indications of drug use were present;
- (d) Failing to take into consideration the surface conditions upon which the SFST were administered;
- (e) Failing to comply with the NTHSA guidelines for administering the SFST;
- (f) Failing to utilize and apply the training he received in the detection of DUII and the administration of the SFST;
- (g) Failing to maintain sufficient competency to perform his duties; and
- (h) Failing to efficiently perform duties.

51. As a direct result of the negligence of the County, and as a substantial factor and legal cause thereof, Mr. Briggs has suffered economic and noneconomic damages against the County in amounts to be determined at trial.

52. Mr. Briggs should be awarded his costs against the County.

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WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. Assume jurisdiction in this matter over Plaintiff's claims;
2. Award Plaintiff's economic and noneconomic damages against Defendants in amounts to be determined at trial in accordance with the allegations set forth above;
3. Award Plaintiff his attorney fees and litigation expenses/costs against Defendants in accordance with the allegations set forth above; and
4. Grant such other relief as the Court deems just and proper.

PLAINTIFF DEMANDS A JURY TRIAL

DATED this 15th day of July, 2008.

**WEATHERFORD, THOMPSON,
COWGILL, BLACK & SCHULTZ, P.C.**

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